

108TH CONGRESS
1ST SESSION

H. R. 1417

To amend title 17, United States Code, to replace copyright arbitration royalty panels with a Copyright Royalty Judge, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 25, 2003

Mr. SMITH of Texas (for himself, Mr. BERMAN, and Mr. CONYERS) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend title 17, United States Code, to replace copyright arbitration royalty panels with a Copyright Royalty Judge, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Copyright Royalty and
5 Distribution Reform Act of 2003”.

6 **SEC. 2. REFERENCE.**

7 Except as otherwise expressly provided, whenever in
8 this Act an amendment or repeal is expressed in terms
9 of an amendment to, or repeal of, a section or other provi-

1 sion, the reference shall be considered to be made to a
 2 section or other provision of title 17, United States Code.

3 **SEC. 3. COPYRIGHT ROYALTY JUDGE AND STAFF.**

4 (a) IN GENERAL.—Chapter 8 is amended to read as
 5 follows:

6 **CHAPTER 8—PROCEEDINGS BY**
 7 **COPYRIGHT ROYALTY JUDGE**

“Sec.

“801. Copyright Royalty Judge; appointment and functions.

“802. Copyright Royalty Judgeship; professional staff.

“803. Proceedings of Copyright Royalty Judges.

“804. Institution and conclusion of proceedings.

8 **“§ 801. Copyright Royalty Judge; appointment and**
 9 **functions**

10 “(a) APPOINTMENT.—The Librarian of Congress
 11 shall appoint a full-time Copyright Royalty Judge. In
 12 making the appointment, the Librarian may consult with
 13 the Register of Copyrights.

14 “(b) FUNCTIONS.—Subject to the provisions of this
 15 chapter, the functions of the Copyright Royalty Judge
 16 shall be as follows:

17 “(1) To make determinations concerning the
 18 adjustment of reasonable copyright royalty rates as
 19 provided in sections 111, 114, 115, 119, and 1004.

20 “(2) To make determinations as to reasonable
 21 terms and rates of royalty payments as provided in
 22 sections 112(e), 114, 115, 116, and 118. The rates
 23 applicable under sections 114(f)(1)(B), 115, and

1 116 shall be calculated to achieve the following ob-
2 jectives:

3 “(A) To maximize the availability of cre-
4 ative works to the public.

5 “(B) To afford the copyright owner a fair
6 return for his or her creative work and the
7 copyright user a fair income under existing eco-
8 nomic conditions.

9 “(C) To reflect the relative roles of the
10 copyright owner and the copyright user in the
11 product made available to the public with re-
12 spect to relative creative contribution, techno-
13 logical contribution, capital investment, cost,
14 risk, and contribution to the opening of new
15 markets for creative expression and media for
16 their communication.

17 “(D) To minimize any disruptive impact
18 on the structure of the industries involved and
19 on generally prevailing industry practices.

20 “(3) To make determinations concerning the
21 adjustment of the copyright royalty rates under sec-
22 tion 111 solely in accordance with the following pro-
23 visions:

24 “(A) The rates established by section
25 111(d)(1)(B) may be adjusted to reflect—

1 “(i) national monetary inflation or de-
2 flation; or

3 “(ii) changes in the average rates
4 charged cable subscribers for the basic
5 service of providing secondary trans-
6 missions to maintain the real constant dol-
7 lar level of the royalty fee per subscriber
8 which existed as of the date of October 19,
9 1976,

10 except that—

11 “(I) if the average rates charged cable
12 system subscribers for the basic service of
13 providing secondary transmissions are
14 changed so that the average rates exceed
15 national monetary inflation, no change in
16 the rates established by section
17 111(d)(1)(B) shall be permitted; and

18 “(II) no increase in the royalty fee
19 shall be permitted based on any reduction
20 in the average number of distant signal
21 equivalents per subscriber.

22 The Copyright Royalty Judge may consider all
23 factors relating to the maintenance of such level
24 of payments, including, as an extenuating fac-
25 tor, whether the industry has been restrained

1 by subscriber rate regulating authorities from
2 increasing the rates for the basic service of pro-
3 viding secondary transmissions.

4 “(B) In the event that the rules and regu-
5 lations of the Federal Communications Com-
6 mission are amended at any time after April 8,
7 1976, to permit the carriage by cable systems
8 of additional television broadcast signals beyond
9 the local service area of the primary transmit-
10 ters of such signals, the royalty rates estab-
11 lished by section 111(d)(1)(B) may be adjusted
12 to insure that the rates for the additional dis-
13 tant signal equivalents resulting from such car-
14 riage are reasonable in the light of the changes
15 effected by the amendment to such rules and
16 regulations. In determining the reasonableness
17 of rates proposed following an amendment of
18 Federal Communications Commission rules and
19 regulations, the Copyright Royalty Judge shall
20 consider, among other factors, the economic im-
21 pact on copyright owners and users; except that
22 no adjustment in royalty rates shall be made
23 under this subparagraph with respect to any
24 distant signal equivalent or fraction thereof rep-
25 resented by—

1 “(i) carriage of any signal permitted
2 under the rules and regulations of the Fed-
3 eral Communications Commission in effect
4 on April 15, 1976, or the carriage of a sig-
5 nal of the same type (that is, independent,
6 network, or noncommercial educational)
7 substituted for such permitted signal; or

8 “(ii) a television broadcast signal first
9 carried after April 15, 1976, pursuant to
10 an individual waiver of the rules and regu-
11 lations of the Federal Communications
12 Commission, as such rules and regulations
13 were in effect on April 15, 1976.

14 “(C) In the event of any change in the
15 rules and regulations of the Federal Commu-
16 nications Commission with respect to syn-
17 dicated and sports program exclusivity after
18 April 15, 1976, the rates established by section
19 111(d)(1)(B) may be adjusted to assure that
20 such rates are reasonable in light of the
21 changes to such rules and regulations, but any
22 such adjustment shall apply only to the affected
23 television broadcast signals carried on those
24 systems affected by the change.

1 “(D) The gross receipts limitations estab-
2 lished by section 111(d)(1)(C) and (D) shall be
3 adjusted to reflect national monetary inflation
4 or deflation or changes in the average rates
5 charged cable system subscribers for the basic
6 service of providing secondary transmissions to
7 maintain the real constant dollar value of the
8 exemption provided by such section, and the
9 royalty rate specified therein shall not be sub-
10 ject to adjustment.

11 “(4) To authorize the distribution of those roy-
12 alty fees collected under sections 111, 119, and
13 1005 that the judge has found are not subject to
14 controversy.

15 “(5) To authorize the distribution of royalty
16 fees deposited with the Register of Copyrights under
17 sections 111, 116, 119(b), and 1003, and to deter-
18 mine, in cases where controversy exists, the distribu-
19 tion of such fees.

20 “(6) To accept or reject royalty claims filed
21 under section 111, 119, and 1007, on the basis of
22 timeliness or the failure to establish the basis for a
23 claim.

24 “(7) To determine the status of a digital audio
25 recording device or a digital audio interface device

1 under sections 1002 and 1003, as provided in sec-
2 tion 1010.

3 “(c) RULINGS.—The Copyright Royalty Judge may
4 make any necessary procedural or evidentiary rulings in
5 any proceeding under this chapter and may, before com-
6 mencing a proceeding under this chapter, make any such
7 rulings that would apply to the proceedings conducted by
8 the Copyright Royalty Judge. The Copyright Royalty
9 Judge may consult with the Register of Copyrights in
10 making any rulings under this subsection.

11 “(d) ADMINISTRATIVE SUPPORT.—The Librarian of
12 Congress shall provide the Copyright Royalty Judge with
13 the necessary administrative services related to pro-
14 ceedings under this chapter.

15 **“§ 802. Copyright Royalty Judgeship; professional**
16 **staff**

17 “(a) QUALIFICATIONS OF COPYRIGHT ROYALTY
18 JUDGE.—The Copyright Royalty Judge shall be an attor-
19 ney with 10 or more years of legal practice with dem-
20 onstrated experience in administrative hearings or court
21 trials and demonstrated knowledge of copyright law who
22 is free of any financial conflict of interest under subsection
23 (h).

24 “(b) PROFESSIONAL STAFF.—The Copyright Royalty
25 Judge shall appoint 2 full-time staff members to assist

1 the Copyright Royalty Judge in performing the functions
2 of the Copyright Royalty Judge. Each staff member shall
3 be an individual with expertise in copyright law and in
4 the business and economics of industries affected by the
5 actions taken by the Copyright Royalty Judge under this
6 chapter.

7 “(c) TERMS.—The term of the Copyright Royalty
8 Judge shall be 5 years. An individual serving as a Copy-
9 right Royalty Judge may be reappointed to subsequent
10 terms as such judge. The term of the Copyright Royalty
11 Judge shall begin when the term of the predecessor of that
12 Judge ends. When the term of office of a Copyright Roy-
13 alty Judge ends, the individual serving that term may con-
14 tinue to serve until a successor is selected.

15 “(d) VACANCIES.—If a vacancy should occur in the
16 position of Copyright Royalty Judge, the Librarian of
17 Congress shall act expeditiously to fill the vacancy, and
18 may appoint an interim Copyright Royalty Judge to serve
19 until another Copyright Royalty Judge is appointed under
20 this section. An individual appointed to fill the vacancy
21 occurring before the expiration of the term for which the
22 predecessor of that individual was appointed shall be ap-
23 pointed for the remainder of that term.

24 “(e) COMPENSATION.—The Copyright Royalty Judge
25 shall receive compensation at the rate of basic pay payable

1 for level AL-2 for administrative law judges pursuant to
2 section 5372(b) of title 5, and the staff members ap-
3 pointed under subsection (b) shall each be paid at a rate
4 of pay determined by the Librarian of Congress which
5 shall be not less than the basic rate of pay payable for
6 GS-14 of the General Schedule and not more than the
7 basic rate of pay payable for GS-15 of such Schedule. The
8 compensation of the Copyright Royalty Judge and such
9 staff members shall not be subject to any regulations
10 adopted by the Office of Personnel Management pursuant
11 to its authority under section 5376(b)(1) of title 5.

12 “(f) INDEPENDENCE OF COPYRIGHT ROYALTY
13 JUDGE.—

14 “(1) IN GENERAL.—The Copyright Royalty
15 Judge shall have full independence in making deter-
16 minations concerning adjustments and determina-
17 tions of copyright royalty rates and terms, the dis-
18 tribution of copyright royalties, the acceptance or re-
19 jection of royalty claims and rate adjustment peti-
20 tions, and in issuing rulings under this title, except
21 that the Copyright Royalty Judge may consult with
22 the Register of Copyrights in making such deter-
23 minations.

24 “(2) PERFORMANCE APPRAISALS.—

1 “(A) IN GENERAL.—Notwithstanding any
2 other provision of law or any regulation of the
3 Library of Congress, the Copyright Royalty
4 Judge shall not receive an annual performance
5 appraisal.

6 “(B) RELATING TO SANCTION OR RE-
7 MOVAL.—To the extent that the Librarian of
8 Congress adopts regulations under subsection
9 (h) relating to the sanction or removal of a
10 Copyright Royalty Judge and such regulations
11 require documentation to establish the cause of
12 such sanction or removal, the Copyright Roy-
13 alty Judge may receive an appraisal related
14 specifically to the cause of the sanction or re-
15 moval.

16 “(g) INCONSISTENT DUTIES BARRED.—The Copy-
17 right Royalty Judge may not undertake duties incon-
18 sistent with his or her duties and responsibilities as Copy-
19 right Royalty Judge.

20 “(h) STANDARDS OF CONDUCT.—The Librarian of
21 Congress shall adopt regulations regarding the standards
22 of conduct, including financial conflict of interest and re-
23 strictions against ex parte communications, which shall
24 govern the Copyright Royalty Judge and the proceedings
25 under this chapter.

1 “(i) REMOVAL OR SANCTION.—The Librarian of Con-
2 gress may sanction or remove a Copyright Royalty Judge
3 for violation of the standards of conduct adopted under
4 subsection (h), misconduct, neglect of duty, or any dis-
5 qualifying physical or mental disability. Any such sanction
6 or removal may be made only after notice and opportunity
7 for a hearing, but the Librarian of Congress may suspend
8 the Copyright Royalty Judge during the pendency of such
9 hearing. The Librarian shall appoint an interim Copyright
10 Royalty Judge during the period of any such suspension.

11 **“§ 803. Proceedings of Copyright Royalty Judges**

12 “(a) PROCEEDINGS.—The Copyright Royalty Judge
13 shall conduct proceedings in accordance with subchapter
14 II of chapter 5 of title 5, for the purpose of making deter-
15 minations in carrying out the purposes set forth in section
16 801. The Copyright Royalty Judge shall act on the basis
17 of a fully documented written record, prior decisions of
18 the Copyright Royalty Tribunal, prior copyright arbitra-
19 tion panel determinations, and rulings by the Librarian
20 of Congress before the effective date of the Copyright Roy-
21 alty and Distribution Reform Act of 2003. Any person
22 participating in proceedings under this chapter may sub-
23 mit relevant information and proposals to the Copyright
24 Royalty Judge in such proceedings.

25 “(b) PROCEDURES.—

1 “(1) PARTICIPATION IN GENERAL.—Subject to
2 paragraph (2), a person may participate in pro-
3 ceedings under this chapter, including through the
4 submission of briefs or other information, only if
5 that person files with the Copyright Royalty Judge,
6 in such form and manner as the Librarian of Con-
7 gress may by regulation prescribe, a notice of intent
8 to participate in the proceedings, together with a fil-
9 ing fee of \$150, before the proceedings commence.

10 “(2) SMALL CLAIMS PROCEEDINGS.—If the
11 amount in controversy that a party to a proceeding
12 under this chapter to determine the distribution of
13 royalties asserts is \$500 or less, that party may elect
14 to have the controversy decided by the Copyright
15 Royalty Judge on the basis of the filing in writing
16 of the initial claim, initial response by any opposing
17 party, and one additional response by each of such
18 party. The party making such election shall not be
19 required to pay the filing fee under paragraph (1).

20 “(3) REGULATIONS.—

21 “(A) IN GENERAL.—The Register of Copy-
22 rights shall, not later than 60 days after the
23 date of the enactment of the Copyright Royalty
24 and Distribution Reform Act of 2003, issue

1 regulations to govern proceedings under this
2 chapter, subject to section 801(c).

3 “(B) INTERIM REGULATIONS.—Until such
4 regulations are adopted, the regulations in ef-
5 fect under this chapter on the day before such
6 date of enactment shall continue to apply, ex-
7 cept that functions carried out under such regu-
8 lations by the Librarian of Congress, the Reg-
9 ister of Copyrights, or copyright arbitration
10 royalty panels that, as of such date of enact-
11 ment, are to be carried out by the Copyright
12 Royalty Judge under this chapter, shall be car-
13 ried out by the Copyright Royalty Judge under
14 such regulations.

15 “(C) REQUIREMENTS.—Regulations issued
16 under subparagraph (A) shall include the fol-
17 lowing:

18 “(i) The Federal Rules of Evidence
19 with respect to hearsay shall apply to pro-
20 ceedings under this chapter.

21 “(ii) Discovery in such proceedings
22 shall be permitted for a period of 60 days.
23 Final witness lists for the proceedings shall
24 not be required until the end of the dis-
25 covery period.

1 “(iii) A defending party to a claim in
2 a proceeding may serve upon an adverse
3 party an offer to allow for a determination
4 to be made against the adverse party for
5 the claimed money or property or other
6 specified amount up to the day on which
7 hearings in the proceeding begin. If before
8 the day on which hearings in the pro-
9 ceeding begin an offer under this clause is
10 accepted, either party may file the offer
11 and notice of acceptance of the offer with
12 the Copyright Royalty Judge, who shall
13 enter his or her determination pursuant
14 thereto.

15 “(c) DECISION OF COPYRIGHT ROYALTY JUDGE.—
16 Not later than 6 months after the date of publication of
17 the notice in the Federal Register initiating a proceeding
18 under this chapter, the Copyright Royalty Judge shall
19 issue his or her determination in the proceeding, except
20 that the Copyright Royalty Judge may extend that 6-
21 month period to 1 year for that proceeding if the Copy-
22 right Royalty Judge determines such extension to be nec-
23 essary. The Copyright Royalty Judge’s determination shall
24 be accompanied by the written record, and shall set forth
25 the facts that the Copyright Royalty Judge found relevant

1 to his or her determination. The Librarian of Congress
2 shall cause such determination to be published in the Fed-
3 eral Register. The Librarian shall also publicize the deter-
4 mination in such other manner as the Librarian considers
5 appropriate, including, but not limited to, publication on
6 the official website of the Copyright Office. The Librarian
7 shall also make the determination and the accompanying
8 record available for public inspection and copying.

9 “(d) JUDICIAL REVIEW.—Any determination of the
10 Copyright Royalty Judge under subsection (c) may, within
11 30 days after the publication of the determination in the
12 Federal Register, be appealed, by any aggrieved party who
13 would be bound by the determination, to the United States
14 Court of Appeals for the District of Columbia Circuit. If
15 no appeal is brought within that 30-day period, the deter-
16 mination of the Copyright Royalty Judge is final, and the
17 royalty fee or determination with respect to the distribu-
18 tion of fees, as the case may be, shall take effect as set
19 forth in the determination of the Copyright Royalty
20 Judge. When this title provides that the royalty rates or
21 terms that were previously in effect are to expire on a
22 specified date, any adjustment by the Copyright Royalty
23 Judge of those rates or terms shall be effective as of the
24 day following the date of expiration of the rates or terms
25 that were previously in effect, even if the Copyright Roy-

1 alty Judge’s determination is rendered on a later date.
2 The pendency of an appeal under this paragraph shall not
3 relieve persons obligated to make royalty payments under
4 section 111, 112, 114, 115, 116, 118, 119, or 1003 who
5 would be affected by the determination on appeal to de-
6 posit the statement of account and royalty fees specified
7 in those sections. The court shall have jurisdiction to mod-
8 ify or vacate a determination of the Copyright Royalty
9 Judge only if it finds, on the basis of the record before
10 the Copyright Royalty Judge, that the Copyright Royalty
11 Judge acted in an arbitrary or capricious manner. If the
12 court modifies the determination of the Copyright Royalty
13 Judge, the court shall have jurisdiction to enter its own
14 determination with respect to the amount or distribution
15 of royalty fees and costs, to order the repayment of any
16 excess fees, and to order the payment of any underpaid
17 fees, and the interest pertaining respectively thereto, in
18 accordance with its final judgment. The court may further
19 vacate the determination of the Copyright Royalty Judge
20 and remand the case to the Copyright Royalty Judge for
21 proceedings in accordance with subsection (a).

22 “(e) ADMINISTRATIVE MATTERS.—

23 “(1) DEDUCTION OF COSTS OF LIBRARY OF
24 CONGRESS AND COPYRIGHT OFFICE FROM ROYALTY
25 FEES.—

1 “(A) DEDUCTION FROM FILING FEES AND
2 ROYALTY FEES.—The Librarian of Congress
3 may, to the extent not otherwise provided under
4 this title, deduct from the filing fees collected
5 under subsection (b) for a particular proceeding
6 under this chapter the reasonable costs incurred
7 by the Library of Congress, the Copyright Of-
8 fice, and the Copyright Royalty Judge in con-
9 ducting that proceeding, other than the salaries
10 of the Copyright Royalty Judge and the two
11 professional staff members appointed under sec-
12 tion 802(b). To the extent that such costs ex-
13 ceed the amount of such filing fees, the Librar-
14 ian of Congress may, after making the deduc-
15 tion from such filing fees, deduct the balance of
16 such costs from not more than 1 percent of the
17 royalty fees deposited or collected under this
18 title that relate to that proceeding. Such deduc-
19 tion may be made before the fees are distrib-
20 uted to any copyright claimants.

21 “(B) REMAINING COSTS.—Any costs de-
22 scribed in subparagraph (A) that remain after
23 the deductions under subparagraph (A)—

1 “(i) in ratemaking proceedings, shall
 2 be borne by the parties to the proceedings
 3 in equal proportions; and

4 “(ii) in distribution proceedings, shall
 5 be borne by the parties to the proceedings
 6 in equal proportions.

7 “(C) APPROPRIATIONS.—All funds made
 8 available by an appropriations Act as offsetting
 9 collections and available for deductions under
 10 this subsection shall remain available until ex-
 11 pended.

12 “(2) POSITIONS REQUIRED FOR ADMINISTRA-
 13 TION OF COMPULSORY LICENSING.—Section 307 of
 14 the Legislative Branch Appropriations Act, 1994,
 15 shall not apply to employee positions in the Library
 16 of Congress that are required to be filled in order
 17 to carry out section 111, 112, 114, 115, 116, 118,
 18 or 119 or chapter 10.

19 **“§ 804. Institution and conclusion of proceedings**

20 “(a) FILING OF PETITION.—With respect to pro-
 21 ceedings under paragraphs (1) and (2) of section 801(b)
 22 concerning the determination or adjustment of royalty
 23 rates as provided in sections 111, 112, 114, 115, 116,
 24 118, and 1004, during the calendar years specified in the
 25 schedule set forth in subsection (b), any owner or user

1 of a copyrighted work whose royalty rates are specified
2 by this title, or are established under this chapter before
3 or after the enactment of the Copyright Royalty and Dis-
4 tribution Reform Act of 2003, may file a petition with the
5 Copyright Royalty Judge declaring that the petitioner re-
6 quests a determination or adjustment of the rate. The
7 Copyright Royalty Judge shall make a determination as
8 to whether the petitioner has such a significant interest
9 in the royalty rate in which a determination or adjustment
10 is requested. If the Copyright Royalty Judge determines
11 that the petitioner has such a significant interest, the
12 Copyright Royalty Judge shall cause notice of this deter-
13 mination, with the reasons therefor, to be published in the
14 Federal Register, together with the notice of commence-
15 ment of proceedings under this chapter.

16 “(b) TIMING OF PETITIONS.—

17 “(1) SECTION 111 PROCEEDINGS.—(A) In pro-
18 ceedings under section 801(b)(1) concerning the ad-
19 justment of royalty rates under section 111 to which
20 subparagraph (A) or (D) of section 801(b)(3) ap-
21 plies, a petition described in subsection (a) may be
22 filed during the year 2005 and in each subsequent
23 fifth calendar year.

24 “(B) In proceedings under section 801(b)(1)
25 concerning the adjustment of royalty rates under

1 section 111 to which subparagraph (B) or (C) of
2 section 801(b)(3) applies, within 12 months after an
3 event described in either of those subsections, any
4 owner or user of a copyrighted work whose royalty
5 rates are specified by section 111, or by a rate es-
6 tablished under this chapter before or after the en-
7 actment of the Copyright Royalty and Distribution
8 Reform Act of 2003, may file a petition with the
9 Copyright Royalty Judge declaring that the peti-
10 tioner requests an adjustment of the rate. The Copy-
11 right Royalty Judge shall then proceed as set forth
12 in subsection (a) of this section. Any change in roy-
13 alty rates made under this chapter pursuant to this
14 subparagraph may be reconsidered in the year 2005,
15 and each fifth calendar year thereafter, in accord-
16 ance with the provisions in section 801(b)(3)(B) or
17 (C), as the case may be.

18 “(2) SECTION 115 PROCEEDINGS.—In pro-
19 ceedings under section 801(b)(1) or (2) concerning
20 the adjustment or determination of royalty rates as
21 provided in section 115, a petition described in para-
22 graph (1) may be filed in the year 2007 and in each
23 subsequent fifth calendar year or as prescribed in
24 section 115(c)(3)(B), (C), or (D).

1 “(3) SECTION 116 PROCEEDINGS.—(A) In pro-
2 ceedings under section 801(b)(2) concerning the de-
3 termination of royalty rates and terms as provided
4 in section 116, a petition described in paragraph (1)
5 may be filed at any time within 1 year after nego-
6 tiated licenses authorized by section 116 are termi-
7 nated or expire and are not replaced by subsequent
8 agreements.

9 “(B) If a negotiated license authorized by sec-
10 tion 116 is terminated or expires and is not replaced
11 by another such license agreement which provides
12 permission to use a quantity of musical works not
13 substantially smaller than the quantity of such
14 works performed on coin-operated phonorecord play-
15 ers during the 1-year period ending March 1, 1989,
16 the Copyright Royalty Judge shall, upon petition
17 filed under paragraph (1) within 1 year after such
18 termination or expiration, commence a proceeding to
19 promptly establish an interim royalty rate or rates
20 for the public performance by means of a coin-oper-
21 ated phonorecord player of nondramatic musical
22 works embodied in phonorecords which had been
23 subject to the terminated or expired negotiated li-
24 cense agreement. Such rate or rates shall be the
25 same as the last such rate or rates and shall remain

1 in force until the conclusion of proceedings by the
2 Copyright Royalty Judge, in accordance with section
3 803, to adjust the royalty rates applicable to such
4 works, or until superseded by a new negotiated li-
5 cense agreement, as provided in section 116(b).

6 “(4) SECTION 112 AND 114.—With respect to
7 proceedings under section 801(b)(2) concerning the
8 determination of reasonable terms and rates of roy-
9 alty payments as provided in section 112 or 114, the
10 Librarian of Congress and the Copyright Royalty
11 Judge shall proceed when and as provided by those
12 sections.

13 “(5) SECTION 118 PROCEEDINGS.—With respect
14 to proceedings under section 801(b)(2) concerning
15 the determination of reasonable terms and rates of
16 royalty payments as provided in section 118, the Li-
17 brarian of Congress and the Copyright Royalty
18 Judge shall proceed when and as provided by that
19 section.

20 “(6) PROCEEDINGS CONCERNING DISTRIBUTION
21 OF ROYALTY FEES.—With respect to proceedings
22 under section 801(b)(5) concerning the distribution
23 of royalty fees in certain circumstances under sec-
24 tion 111, 116, 119, or 1007, the Copyright Royalty
25 Judge shall, upon a determination that a con-

1 troverſy exists concerning ſuch diſtribution, cauſe to
2 be published in the Federal Register notice of com-
3 mencement of proceedings under this chapter.”.

4 (b) CONFORMING AMENDMENT.—The table of chap-
5 ters for title 17, United States Code, is amended by strik-
6 ing the item relating to chapter 8 and inserting the fol-
7 lowing:

“8. PROCEEDINGS OF COPYRIGHT ROYALTY JUDGE 801”.

8 **SEC. 4. DEFINITION.**

9 Section 101 is amended by inserting after the defini-
10 tion of “copies” the following:

11 “The ‘Copyright Royalty Judge’ is the Copy-
12 right Royalty Judge appointed under ſection 802 of
13 this title, and includes any individual ſerving as an
14 interim Copyright Royalty Judge under ſuch ſec-
15 tion.”.

16 **SEC. 5. TECHNICAL AMENDMENTS.**

17 (a) CABLE RATES.—Section 111(d)(4) is amended—

18 (1) in subparagraph (B)—

19 (A) by ſtriking “Librarian of Congress
20 ſhall, upon the recommendation of the Register
21 of Copyrights,” and inserting “Copyright Roy-
22 alty Judge ſhall”;

23 (B) by ſtriking “Librarian” each ſubse-
24 quent place it appears and inserting “Copyright
25 Royalty Judge”; and

1 (C) by striking “convene a copyright arbi-
2 tration royalty panel” and inserting “conduct a
3 proceeding”; and

4 (2) in subparagraph (C), by striking “Librarian
5 of Congress” and inserting “Copyright Royalty
6 Judge”.

7 (b) EPHEMERAL RECORDINGS.—Section 112(e) is
8 amended—

9 (1) in paragraph (3), by amending the first sen-
10 tence to read as follows: “During the first week of
11 January 2007, the Librarian of Congress shall cause
12 notice to be published in the Federal Register of the
13 initiation of voluntary negotiation proceedings for
14 the purpose of determining reasonable terms and
15 rates of royalty payments for the activities specified
16 by paragraph (1) during the period beginning on
17 January 1, 2007, and ending on December 31,
18 2011, or such other date as the parties may agree.”;

19 (2) in paragraph (4)—

20 (A) by amending the first sentence to read
21 as follows: “In the absence of license agree-
22 ments negotiated under paragraph (2), during
23 the 60-day period beginning on the date that is
24 6 months after publication of the notice speci-
25 fied in paragraph (3), and upon the filing of a

petition in accordance with section 804(a), the Copyright Royalty Judge shall commence a proceeding pursuant to chapter 8 to determine and publish in the Federal Register a schedule of reasonable rates and terms which, subject to paragraph (5), shall be binding on all copyright owners of sound recordings and transmitting organizations entitled to a statutory license under this subsection during the 5-year period specified in paragraph (3), or such other date as the parties may agree.”;

(B) by striking “copyright arbitration royalty panel” each subsequent place it appears and inserting “Copyright Royalty Judge”; and

(C) in the fourth sentence, by striking “its decision” and inserting “his or her decision”;

(3) in paragraph (5), by striking “or decision by the Librarian of Congress” and inserting “, decision by Librarian of Congress, or determination by the Copyright Royalty Judge”; and

(4) in paragraph (6)—

(A) in the first sentence, by striking “January 2000, and at 2-year” and inserting “January 2012, and at 5-year”;

(B) in the second sentence—

1 (i) by striking “803(a)(1)” and insert-
2 ing “804(a)”; and

3 (ii) by striking “July 1, 2000, and at
4 2-year” and inserting “July 1, 2012, and
5 at 5-year”; and

6 (C) in the last sentence, by striking “802”
7 and inserting “803”.

8 (c) SCOPE OF EXCLUSIVE RIGHTS IN SOUND RE-
9 CORDINGS.—Section 114(f) is amended—

10 (1) in paragraph (1)—

11 (A) in subparagraph (A), by amending the
12 first sentence to read as follows: “During the
13 first week of January 2006, the Librarian of
14 Congress shall cause notice to be published in
15 the Federal Register of the initiation of vol-
16 untary negotiation proceedings for the purpose
17 of determining reasonable terms and rates of
18 royalty payments for subscription transmissions
19 by preexisting subscription services and trans-
20 missions by preexisting satellite digital audio
21 radio services specified by subsection (d)(2)
22 during the period beginning on January 1,
23 2006, and ending on December 31, 2010, or
24 such other date as the parties may agree.”;

25 (B) in subparagraph (B)—

1 (i) by amending the first sentence to
2 read as follows: “In the absence of license
3 agreements negotiated under subparagraph
4 (A), during the 60-day period beginning on
5 the date that is 6 months after publication
6 of the notice specified in subparagraph
7 (A), and upon the filing of a petition in ac-
8 cordance with section 804(a), the Copy-
9 right Royalty Judge shall commence pro-
10 ceedings pursuant to chapter 8 to deter-
11 mine and publish in the Federal Register
12 a schedule of rates and terms which, sub-
13 ject to paragraph (3), shall be binding on
14 all copyright owners of sound recordings
15 and entities performing sound recordings
16 affected by this paragraph.”; and

17 (ii) by striking “copyright arbitration
18 royalty panel” and inserting “Copyright
19 Royalty Judge”; and

20 (C) in subparagraph (C)—

21 (i) in clause (i)(II), by striking
22 “2001” and inserting “2011”;

23 (ii) in clause (ii)—

24 (I) by striking “803(a)(1)” and
25 inserting “804(a)”; and

1 (II) in subclause (II), by striking
2 “2001” and inserting “2011”; and
3 (iii) in clause (iii), by striking “802”
4 and inserting “803”;

5 (2) in paragraph (2)—

6 (A) in subparagraph (A), by amending the
7 first sentence to read as follows: “During the
8 first week of January 2007, the Librarian of
9 Congress shall cause notice to be published in
10 the Federal Register of the initiation of vol-
11 untary negotiation proceedings for the purpose
12 of determining reasonable terms and rates of
13 royalty payments for public performances of
14 sound recordings by means of eligible non-
15 subscription transmissions and transmissions by
16 new subscription services specified by sub-
17 section (d)(2) during the period beginning on
18 January 1, 2007, and ending on December 31,
19 2011, or such other date as the parties may
20 agree.”;

21 (B) in subparagraph (B)—

22 (i) by amending the first sentence to
23 read as follows: “In the absence of license
24 agreements negotiated under subparagraph
25 (A), during the 60-day period beginning on

1 the date that is 6 months after publication
2 of the notice specified in subparagraph
3 (A), and upon the filing of a petition in ac-
4 cordance with section 804(a), the Copy-
5 right Royalty Judge shall commence pro-
6 ceedings pursuant to chapter 8 to deter-
7 mine and publish in the Federal Register
8 a schedule of rates and terms which, sub-
9 ject to paragraph (3), shall be binding on
10 all copyright owners of sound recordings
11 and entities performing sound recordings
12 affected by this paragraph during the pe-
13 riod beginning on January 1, 2007, and
14 ending on December 31, 2011, or such
15 other date as the parties may agree.”; and

16 (ii) by striking “copyright arbitration
17 royalty panel” each subsequent place it ap-
18 pears and inserting “Copyright Royalty
19 Judge”;

20 (C) in subparagraph (C)—

21 (i) in clause (i)(II), by striking “Janu-
22 ary 2000, and at 2-year” and inserting
23 “January 2012, and at 5-year”;

24 (ii) in clause (ii)—

1 (I) by striking “803(a)(1)” and
2 inserting “804(a)”; and

3 (II) in subclause (II), by striking
4 “July 1, 2000, and at 2-year” and in-
5 serting “July 1, 2012, and at 5-year”;
6 and

7 (iii) in clause (iii), by striking “802”
8 and inserting “803”; and

9 (3) in paragraph (3), by striking “or decision
10 by the Librarian of Congress” and inserting “, deci-
11 sion by the Librarian of Congress, or determination
12 by the Copyright Royalty Judge”.

13 (d) PHONORECORDS OF NONDRAMATIC MUSICAL
14 WORKS.—Section 115(c)(3) is amended—

15 (1) in subparagraph (C), by amending the first
16 sentence to read as follows: “During the period of
17 June 30, 2006, through December 31, 2006, the Li-
18 brarian of Congress shall cause notice to be pub-
19 lished in the Federal Register of the initiation of vol-
20 untary negotiation proceedings for the purpose of
21 determining reasonable terms and rates of royalty
22 payments for the activities specified by subpara-
23 graph (A) during the period beginning January 1,
24 2008, and ending on the effective date of any new
25 terms and rates established pursuant to this sub-

1 paragraph or subparagraph (D) or (F), or such
2 other date (regarding digital phonorecord deliveries)
3 as the parties may agree.”;

4 (2) in subparagraph (D)—

5 (A) by amending the first sentence to read
6 as follows: “In the absence of license agree-
7 ments negotiated under subparagraphs (B) and
8 (C), upon the filing of a petition in accordance
9 with section 804(a), the Copyright Royalty
10 Judge shall commence proceedings pursuant to
11 chapter 8 to determine and publish in the Fed-
12 eral Register a schedule or rates and terms
13 which, subject to subparagraph (E), shall be
14 binding on all copyright owners of nondramatic
15 musical works and persons entitled to obtain a
16 compulsory license under subsection (a)(1) dur-
17 ing the period beginning January 1, 2008, and
18 ending on the effective date of any new terms
19 and rates established pursuant to subparagraph
20 (C) or (F) or this subparagraph, or such other
21 date (regarding digital phonorecord deliveries)
22 as may be determined pursuant to subpara-
23 graphs (B) and (C).”; and

1 (B) in the second sentence, by striking
 2 “copyright arbitration royalty panel” and in-
 3 serting “Copyright Royalty Judge”;

4 (3) in subparagraph (E)(i), in the first sen-
 5 tence, by striking “the Librarian of Congress” and
 6 inserting “a copyright arbitration royalty panel, the
 7 Librarian of Congress, or the Copyright Royalty
 8 Judge”; and

9 (4) in subparagraph (F), by striking “1997”
 10 and inserting “2007”.

11 (e) COIN-OPERATED PHONORECORD PLAYERS.—Sec-
 12 tion 116 is amended—

13 (1) in subsection (b), by amending paragraph
 14 (2) to read as follows:

15 “(2) CHAPTER 8 PROCEEDING.—Parties not
 16 subject to such a negotiation may have the terms
 17 and rates and the division of fees described in para-
 18 graph (1) determined in a proceeding in accordance
 19 with the provisions of chapter 8.”; and

20 (2) in subsection (c)—

21 (A) in the subsection heading, by striking
 22 “COPYRIGHT ARBITRATION ROYALTY PANEL
 23 DETERMINATIONS” and inserting “DETER-
 24 MINATIONS BY COPYRIGHT ROYALTY JUDGE”;
 25 and

1 (B) by striking “a copyright arbitration
2 royalty panel” and inserting “the Copyright
3 Royalty Judge”.

4 (f) USE OF CERTAIN WORKS IN CONNECTION WITH
5 NONCOMMERCIAL BROADCASTING.—Section 118 is
6 amended—

7 (1) in subsection (b)—

8 (A) in paragraph (1), by striking the sec-
9 ond and third sentences;

10 (B) in paragraph (2), by striking “the Li-
11 brarian of Congress: *Provided, That*” and in-
12 serting “a copyright arbitration royalty panel,
13 the Librarian of Congress, or the Copyright
14 Royalty Judge, if”; and

15 (C) in paragraph (3)—

16 (i) by amending the first sentence to
17 read as follows: “In the absence of license
18 agreements negotiated under paragraph
19 (2), the Copyright Royalty Judge shall,
20 pursuant to chapter 8, conduct a pro-
21 ceeding to determine and publish in the
22 Federal Register a schedule of rates and
23 terms which, subject to paragraph (2),
24 shall be binding on all owners of copyright
25 in works specified by this subsection and

1 public broadcasting entities, regardless of
 2 whether such copyright owners have sub-
 3 mitted proposals to the Librarian of Con-
 4 gress.”; and

5 (ii) in the second sentence, by striking
 6 “copyright arbitration royalty panel” and
 7 inserting “Copyright Royalty Judge”;

8 (2) in subsection (c), by striking “1997” and
 9 inserting “2007”; and

10 (3) in subsection (d), by striking “a copyright
 11 arbitration royalty panel” and inserting “the Copy-
 12 right Royalty Judge”.

13 (g) SECONDARY TRANSMISSIONS BY SATELLITE CAR-
 14 RIERS.—Section 119(b)(4) is amended—

15 (1) in subparagraph (A), by striking “Librarian
 16 of Congress” the first place it appears and inserting
 17 “Copyright Royalty Judge”; and

18 (2) by amending subparagraphs (B) and (C) to
 19 read as follows:

20 “(B) DETERMINATION OF CONTROVERSY;
 21 DISTRIBUTIONS.—After the first day of August
 22 of each year, the Copyright Royalty Judge shall
 23 determine whether there exists a controversy
 24 concerning the distribution of royalty fees. If
 25 the Copyright Royalty Judge determines that

1 no such controversy exists, the Copyright Roy-
2 alty Judge shall, after deducting reasonable ad-
3 ministrative costs under this paragraph, dis-
4 tribute such fees to the copyright owners enti-
5 tled to receive them, or to their designated
6 agents. If the Copyright Royalty Judge finds
7 the existence of a controversy, the Copyright
8 Royalty Judge shall, pursuant to chapter 8 of
9 this title, conduct a proceeding to determine the
10 distribution of royalty fees.

11 “(C) WITHHOLDING OF FEES DURING
12 CONTROVERSY.—During the pendency of any
13 proceeding under this subsection, the Copyright
14 Royalty Judge shall withhold from distribution
15 an amount sufficient to satisfy all claims with
16 respect to which a controversy exists, but shall
17 have discretion to proceed to distribute any
18 amounts that are not in controversy.”.

19 (h) DIGITAL AUDIO RECORDING DEVICES.—

20 (1) ROYALTY PAYMENTS.—Section 1004(a)(3)
21 is amended by amending the third sentence to read
22 as follows: “Not more than once each year, any in-
23 terested copyright party may petition the Copyright
24 Royalty Judge to increase the royalty maximum and,
25 if more than 20 percent of the royalty payments are

1 at the relevant royalty maximum, the Copyright
2 Royalty Judge shall prospectively increase such roy-
3 alty maximum with the goal of having no more than
4 10 percent of such payments at the new royalty
5 maximum; however the amount of any such increase
6 as a percentage of the royalty maximum shall in no
7 event exceed the percentage increase in the Con-
8 sumer Price Index during the period under review.”.

9 (2) ENTITLEMENT TO ROYALTY PAYMENTS.—

10 Section 1006(c) is amended by striking “Librarian
11 of Congress shall convene a copyright arbitration royalty
12 panel which” and inserting “Copyright Royalty Judge”.

13 (3) PROCEDURES FOR DISTRIBUTING ROYALTY
14 PAYMENTS.—Section 1007 is amended—

15 (A) in subsection (a), by amending para-
16 graph (1) to read as follows:

17 “(1) FILING OF CLAIMS.—During the first 2
18 months of each calendar year, every interested copy-
19 right party seeking to receive royalty payments to
20 which such party is entitled under section 1006 shall
21 file with the Copyright Royalty Judge a claim for
22 payments collected during the preceding year in such
23 form and manner as the Librarian of Congress shall
24 prescribe by regulation.”; and

1 (B) by amending subsections (b) and (c) to
2 read as follows:

3 “(b) DISTRIBUTION OF PAYMENTS IN THE ABSENCE
4 OF A DISPUTE.—After the period established for the filing
5 of claims under subsection (a), in each year, the Copyright
6 Royalty Judge shall determine whether there exists a con-
7 troversy concerning the distribution of royalty payments
8 under section 1006(c). If the Copyright Royalty Judge de-
9 termines that no such controversy exists, the copyright
10 royalty judge shall, within 30 days after such determina-
11 tion, authorize the distribution of the royalty payments as
12 set forth in the agreements regarding the distribution of
13 royalty payments entered into pursuant to subsection (a).
14 The Librarian of Congress shall, before such royalty pay-
15 ments are distributed, deduct the reasonable administra-
16 tive costs incurred by the Librarian and the Copyright Of-
17 fice under this section.

18 “(c) RESOLUTION OF DISPUTES.—If the Copyright
19 Royalty Judge finds the existence of a controversy, the
20 Copyright Royalty Judge shall, pursuant to chapter 8 of
21 this title, conduct a proceeding to determine the distribu-
22 tion of royalty payments. During the pendency of such a
23 proceeding, the Copyright Royalty Judge shall withhold
24 from distribution an amount sufficient to satisfy all claims
25 with respect to which a controversy exists, but shall, to

1 the extent feasible, authorize the distribution of any
 2 amounts that are not in controversy. The Librarian of
 3 Congress shall, before such royalty payments are distrib-
 4 uted, deduct the reasonable administrative costs incurred
 5 by the Librarian and the Copyright Office under this sec-
 6 tion.”.

7 (4) DETERMINATION OF CERTAIN DISPUTES.—

8 (A) Section 1010 is amended to read as follows:

9 **“§ 1010. Determination of certain disputes**

10 “(a) SCOPE OF DETERMINATION.—Before the date
 11 of first distribution in the United States of a digital audio
 12 recording device or a digital audio interface device, any
 13 party manufacturing, importing, or distributing such de-
 14 vice, and any interested copyright party may mutually
 15 agree to petition the Copyright Royalty Judge to deter-
 16 mine whether such device is subject to section 1002, or
 17 the basis on which royalty payments for such device are
 18 to be made under section 1003.

19 “(b) INITIATION OF PROCEEDINGS.—The parties
 20 under subsection (a) shall file the petition with the Copy-
 21 right Royalty Judge requesting the commencement of a
 22 proceeding. Within 2 weeks after receiving such a petition,
 23 the Librarian of Congress shall cause notice to be pub-
 24 lished in the Federal Register of the initiation of the pro-
 25 ceeding.

1 “(c) STAY OF JUDICIAL PROCEEDINGS.—Any civil
2 action brought under section 1009 against a party to a
3 proceeding under this section shall, on application of one
4 of the parties to the proceeding, be stayed until completion
5 of the proceeding.

6 “(d) PROCEEDING.—The Copyright Royalty Judge
7 shall conduct a proceeding with respect to the matter con-
8 cerned, in accordance with such procedures as the Copy-
9 right Royalty Judge may adopt. The Copyright Royalty
10 Judge shall act on the basis of a fully documented written
11 record. Any party to the proceeding may submit relevant
12 information and proposals to the Copyright Royalty
13 Judge. The parties to the proceeding shall bear the entire
14 cost thereof in such manner and proportion as the Copy-
15 right Royalty Judge shall direct.

16 “(e) JUDICIAL REVIEW.—Any determination of the
17 Copyright Royalty Judge under subsection (d) may be ap-
18 pealed, by a party to the proceeding, in accordance with
19 section 803(d) of this title. The pendency of an appeal
20 under this subsection shall not stay the determination of
21 the Copyright Royalty Judge. If the court modifies the de-
22 termination of the Copyright Royalty Judge, the court
23 shall have jurisdiction to enter its own decision in accord-
24 ance with its final judgment. The court may further vacate
25 the determination of the Copyright Royalty Judge and re-

1 mand the case for proceedings as provided in this sec-
2 tion.”.

3 (B) The item relating to section 1010 in the
4 table of sections for chapter 10 is amended to read
5 as follows:

“1010. Determination of certain disputes.”.

6 **SEC. 6. TRANSITION PROVISIONS.**

7 (a) IN GENERAL.—Subject to subsection (b), the
8 amendments made by this Act shall not affect any pro-
9 ceedings commenced before the enactment of this Act
10 under the provisions of title 17, United States Code,
11 amended by this Act, and pending on such date of enact-
12 ment. Such proceedings shall continue, determinations
13 made in such proceedings, and appeals taken therefrom,
14 as if this Act had not been enacted, and shall continue
15 in effect until modified under title 17, United States Code,
16 as amended by this Act.

17 (b) EFFECTIVE PERIODS FOR CERTAIN RATEMAKING
18 PROCEEDINGS.—Notwithstanding subsection (a), terms
19 and rates determined under proceedings under section
20 114(f)(2) or 112(e) of title 17, United States Code, com-
21 menced in 2002 shall be effective for an additional period
22 of 3 years, or until such later date as the parties may
23 agree, in lieu of the 2-year period otherwise provided for
24 under such sections.

